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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 07-0296 MAG
)	
Plaintiff,)	
)	UNITED STATES' SENTENCING
v.)	MEMORANDUM
)	
CAROL J. QUITMEYER,)	Hearing: September 26, 2008
)	Time: 9:30 a.m.
Defendant.)	Courtroom: Hon. Nandor J. Vadas

I INTRODUCTION

On June 23, 2008, defendant Carol Quitmeyer was convicted following a stipulated-facts bench trial of Driving While Under the Influence of Alcohol and Driving With a Blood Alcohol Content Above 0.08%, pursuant to 36 C.F.R. § 1004.23(a)(1) and § (a)(2). This Court has set September 26, 2008, as the date for judgment and sentencing. The government submits the following sentencing memorandum to advise the Court of any objections the government has to the presentence report ("PSR") and the government's sentencing recommendation.

II. ARGUMENT

A. Factors to Consider in Imposing a Sentence.

As the crimes in this case are Class B Misdemeanors, the Sentencing Guidelines do not

1 apply. U.S.S.G. § 1B1.9. Though the Court does not have to consider the Sentencing
2 Guidelines, the Court still must consider the following factors under 18 U.S.C. § 3553(a):

- 3 1. “the nature and circumstances of the offense and the history and
4 characteristics of the defendant”;
- 5 2. “the need for the sentence imposed . . . to reflect the seriousness of the offense, to
6 promote respect for the law, and to provide just punishment for the offense”; to
7 deter; “to protect the public . . .”; and to provide rehabilitation;
- 8 3. “the kinds of sentences available”;
- 9 4. “the need to avoid unwarranted sentence disparities among defendants. . .”;

10 The United States Probation Office has recommended a sentence of three years probation,
11 one hundred twenty-five hours of community service, a restriction of her driving privileges for
12 180 days, maintenance of proof of responsibility for three years, participation in vocational
13 training, and payment of a special assessment.¹ The United States concurs with the U.S.
14 Probation Officer’s recommendation. The United States would also request the added condition
15 that the defendant be assessed for possible alcohol abuse and be provided treatment if deemed
16 appropriate by the Probation Officer.

17 B. “the history and characteristics of the defendant”

18 The defendant has no prior criminal history. Although she did acknowledge that this is not
19 the first time she has driven while under the influence, this is the first instance in which it has
20 had criminal consequences. *See* PSR ¶ 11. Therefore, incarceration is not warranted in this case.
21 Supervision by the Probation Officer will prove much more helpful to the defendant and will
22 ensure that similar incidents do not occur in the future.

23 The government also concurs with the U.S. Probation Officer that defendant should
24 participate in vocational training. Defendant is obviously a very bright and articulate woman
25 and appears fully capable of participating in the workforce. Despite this, her employment record
26

27 ¹ Although the PSR only requested a \$10 special assessment, the law requires payment of a \$10 special
28 assessment per count of conviction. 18 U.S.C. § 3013(a)(1)(A)(ii). Since defendant was convicted of two counts,
she will have to pay a \$20 special assessment.

1 is spotty and reflects that while she has been employed intermittently since 1999, she is currently
 2 unemployed. *See* PSR ¶ 29-35. Furthermore, she has substantial debts and, given the current
 3 financial markets, having a steady income is critically important. *See* PSR ¶ 36. The United
 4 States believes she could benefit from vocational guidance.

5 The United States would also request that the defendant be assessed for alcohol abuse and be
 6 provided treatment if deemed necessary by the Probation Officer. It is true that defendant admits
 7 to only drinking moderately. *See* PSR ¶ 26. But an alcohol-abuse assessment is a standard
 8 condition for individuals convicted of driving while under the influence of alcohol.

9 The United States also typically requests that the defendant complete a First Offender's DUI
 10 Program, but the Probation Officer has been provided proof of completion of such a program and
 11 the United States therefore does not seek the imposition of this condition.

12 C. "the nature and circumstances of the offense" and "the need for the sentence imposed . . .
 13 to reflect the seriousness of the offense, to promote respect for the law, and to provide
 14 just punishment for the offense"; to deter; "to protect the public . . ."; and to provide
 15 rehabilitation;"

16 Driving under the influence of alcohol is a serious crime. It can result in property damage,
 17 physical injury, or loss of life. Defendant is "fortunate that he has not ended one of his
 18 intoxicated escapades facing a sentence for manslaughter or second degree murder." United
 19 States v. Gibson, 896 F.2d 206 (6th Cir. 1990)(the decision to impose consecutive sentences was
 20 not an abuse of discretion where defendant had been convicted nine times for driving under the
 21 influence of alcohol). Therefore, the Court should not take it lightly. Three years is a substantial
 22 enough term of supervision to allow the Probation Officer to intervene meaningfully in
 23 defendant's life and provide whatever support, structure and rehabilitation is necessary to ensure
 24 she does not become a repeat offender.

25 D. "the kinds of sentences available";

26 The government agrees with the United States Probation Officer's assessment that the
 27 maximum term of imprisonment allowable is six months and the maximum period of probation
 28 allowable is five years. 36 C.F.R. § 1001.3; 18 U.S.C. § 3561(c)(2). Each of these counts

1 carries a maximum fine of \$5,000. 18 U.S.C. § 3571(b)(6). The Court may also require the
2 defendant abide by discretionary conditions of probation, including that the defendant participate
3 in employment or schooling (18 U.S.C. § 3563(b)(4)), undergo psychiatric or substance abuse
4 treatment (18 U.S.C. § 3563(b)(9)), intermittent incarceration (18 U.S.C. § 3563(b)(10)), and
5 confinement in a residential program or halfway house (18 U.S.C. § 3563(b)(11)). For each
6 count of conviction, payment of a \$10 special assessment is mandatory. 18 U.S.C. §
7 3013(a)(1)(A)(ii).

8 E. “the need to avoid unwarranted sentence disparities among defendants”

9 The conditions recommended by the United States and the Probation Office in this case are
10 consistent with the standard conditions recommended for a first-time conviction for driving
11 while under the influence of alcohol. The United States has not identified any grounds for
12 departure from that sentence in this case.

13 III. CONCLUSION

14 For the reasons set forth above, the government recommends that the Court impose a three
15 year term of probation that includes the following conditions: 125 hours of community service,
16 vocational training, an alcohol abuse assessment, a restriction of her driving privileges for 180
17 days, maintenance of proof of responsibility for three years, and \$20 in special assessments.

18 Dated: September 19, 2008

Respectfully submitted,

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20 JOSEPH P. RUSSONIELLO
21 United States Attorney

22 /s/
23 WENDY THOMAS
24 Special Assistant United States Attorney
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